IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIA GIAMPA,

Petitioner,

District Court Case
No. 98-D224029

vs.

Nevada Supreme:
Court No.:

THE EIGHTH JUDICIAL DISTRICT COURT
of the State of Nevada, in and for the County
of Clark, and THE HONORABLE DISTRICT
COURT JUDGE, Sandra L. Pomrenze,

Respondent.

Oral Argument
Requested: **YES**

and

CHARLES F. GIAMPA,

Real Party In Interest.

PETITIONER VICTORIA GIAMPA'S
MOTION FOR LEAVE OF COURT
TO FILE IN PROPER PERSON PETITION FOR WRIT
OF MANDAMUS OR IN THE ALTERNATIVE
PETITION FOR WRIT OF PROHIBITION

COMES NOW, VICTORIA GIAMPA (hereinafter VICTORIA), In Proper Person, a resident of Clark County, State of Nevada, moves that the Nevada Supreme Court grant PETITIONER VICTORIA GIAMPA leave of Court to file a Petition for a Writ of Mandamus or In the Alternative a Writ of Prohibition.

PETITIONER VICTORIA requests that the Petition be filed and set for hearing, and for any other relief, general and special, to which PETITIONER VICTORIA may be entitled.

WHEREFORE, PETITIONER VICTORIA seeks permission to pursue a Nevada Supreme Court order for the following:

1. mandating the District Court to allow VICTORIA GIAMPA to file her Motion in Family Court which seeks a final order pursuant to NRCP 60(b) and Nevada Supreme Court January 25, 2008 Decision;

2. declaring VICTORIA GIAMPA not a vexatious litigant;

3. transferring Judge Sandra L. Pomrenze based on bias;

4. any and all such other relief this Court deems appropriate.

DATED this 12th day of SEPTEMBER, 2008.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
Petitioner In Proper Person

NOTICE

TO: DISTRICT COURT JUDGE SANDRA L. POMRENZE, RESPONDENT

TO: CHARLES F. GIAMPA – PLAINTIFF, REAL PARTY IN INTEREST

TO: BRYCE C. DUCKWORTH, ESQ. – ATTORNEY FOR PLAINTIFF, REAL PARTY IN INTEREST

PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION FOR LEAVE OF COURT TO FILE PRO SE PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION for hearing before the NEVADA SUPREME COURT, 201 S. Carson Street, Suite 201, Carson City, Nevada on the ____day of _____, 2008 in Department __ at ___ _.m., or as soon thereafter as the parties can be heard.

DATED this 12th day of SEPTEMBER, 2008.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Proper Person

FACTUAL AND LEGAL ARGUMENT
(Points and Authorities)

VICTORIA has satisfied all requirements and conditions to obtain an issuance of a Writ of Mandamus or in the alternative a Writ of Prohibition. Generally, a Writ of Mandamus is available to control an arbitrary or capricious exercise of discretion, and a Writ of Prohibition is available when a District Court acts without or in excess of its judgment. VICTORIA references the following Nevada Revised Statutes:

> NRS 34.160 Writ may be issued by Supreme Court and district courts; when writ may issue. The writ may be issued by the Supreme Court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.

NRS 34.170 Writ to issue when no plain, speedy and adequate remedy in law. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

VICTORIA has established by a preponderance of evidence that an application for a Writ is entitled to immediate and full relief from this Court as more fully outlined by the foregoing facts. VICTORIA references the following Nevada Revised Statutes:

NRS 34.020 Writ may be granted by Supreme Court and district courts; when writ may issue.

1. This writ may be granted, on application, by the Supreme Court, a district court, or a judge of the district court. When the writ is issued by the district court or a judge of the district court it shall be made returnable before the district court.

RULE 21. WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO A JUDGE OR JUDGES AND OTHER EXTRAORDINARY WRITS

(a) Mandamus or Prohibition to a Judge or Judges; Petition for Writ; Service and Filing. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the Supreme Court with proof of service on the respondent judge or judges and on all parties to the action in the trial court. The

> petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed filing fee, the clerk shall docket the petition and submit it to the court.

On 5/4/07, VICTORIA files MOTION FOR DISCOVERY AND EVIDENTIARY HEARING; MOTION TO REINSTATE AND TO ENFORCE SUPPORT OBLIGATIONS AND TO REDUCE SUPPORT ARREARS WITH INTEREST TO JUDGMENT; AND MOTION FOR EX PARTE ORDER FOR WAGE ASSIGNMENT AND MOTION FOR IMPOSITION OF SANCTIONS IMMEDIATELY DUE AND PAYABLE AGAINST PLAINTIFF. Hearing Date (continued 31 days) to 6/20/07, 11:00 a.m.

On 5/10/07, VICTORIA files APPLICATION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN WILFUL AND DELIBERATE CONTEMPT FOR FAILURE TO MAKE TIMELY MONTHLY SUPPORT PAYMENTS, AND TO REDUCE SUPPORT ARREARS TO JUDGMENT, AND FOR IMPOSITION OF A WAGE ASSIGNMENT, AND FOR SANCTIONS AGAINST PLAINTIFF UPON AND FOR AN ORDER SHORTENING TIME. Hearing Date (shortened 6 days) to 5/4/07, 11:00 a.m.

On 6/4/07, VICTORIA files MOTION TO STRIKE PLAINTIFF'S REPLY TO DEFENDANT'S REPLY TO PLAINTIFF'S COUNTERMOTION FOR FINDING DEFENDANT TO BE A VEXATIOUS LITIGANT; COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR REINBURSEMENT OF ATTORNEY'S FEES TO PLAINTIFF. Hearing Date **(continued 20 days)** to **6/24/07, 11:00 a.m.**

On 6/4/07, VICTORIA files MOTION TO STRIKE PLAINTIFF'S REPLY TO PLAINTIFF'S REPLY AND OPPOSITION TO DEFENDANT'S APPLICATION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN WILLFUL AND DELIBERATE CONTEMPT FOR FAILURE TO MAKE TIMELY MONTHLY SUPPORT PAYMENTS, AND TO REDUCE SUPPORT ARREARS TO JUDGMENT, AND FOR IMPOSITION OF A WAGE ASSIGNMENT, AND FOR SANCTIONS AGAINST PLAINTIFF. Hearing Date **(delayed 50 days)** to 7/24/07, 11:00 a.m.

On 6/8/07, VICTORIA files MOTION TO CONSOLIDATE HEARING DATES. Hearing Date **(delayed 46 days)** to 7/24/07, 11:00 a.m.

On 6/20/07, VICTORIA files MOTION FOR DISCOVERY AND EVIDENTIARY HEARING; MOTION TO REINSTATE AND TO ENFORCE SUPPORT OBLIGATIONS AND TO REDUCE SUPPORT ARREARS WITH INTEREST TO JUDGMENT; AND MOTION FOR EX PARTE ORDER FOR WAGE ASSIGNMENT AND MOTION FOR IMPOSITION OF SANCTIONS

IMMEDIATELY DUE AND PAYABLE AGAINST PLAINTIFF. Hearing Date **(delayed 47 days)** to 6/20/07, 11:00 a.m.

On 7/1/07, Judge Pomrenze files AFFIDAVIT OF SANDRA L. POMRENZE IN RESPONSE TO DEFENDANT'S MOTION FOR CASE REASSIGNMENT AND/OR RECUSAL FOR CAUSE which states:
SANDRA L. POMRENZE, being duly sworn, deposes and says:

> *On July 1, 2007 this case was randomly reassigned from Department C to this department.*
>
> *I have no bias against either party in this case.*

VICTORIA is not certain if the affidavit a district court judge files sufficiently complies with EDCR 2.21 which states in pertinent part:

> (c) Affidavits must contain only factual, evidentiary matter, conform with the requirements of N.R.C.P. 56(e), and avoid mere general conclusions or argument. Affidavits substantially defective in these respects may be stricken, wholly or in part.

On 7/9/07, VICTORIA files MOTION FOR RELIEF FROM JUDGMENT DUE TO A HISTORY OF FACTS AND ATTENDANT CIRCUMSTANCES EVIDENCING PLAINTIFF'S FRAUD UPON THE COURT PURSUANT TO NRCP 60(b). Hearing Date **(continued 29 days)** to 8/7/07, 9:00 a.m.

On 7/9/07, VICTORIA files AMENDED MOTION TO STRIKE PURSUANT TO NRCP 12(f) and MOTION FOR IMPOSITION OF SANCTIONS AGAINST PLAINTIFF IMMEDIATELY DUE AND PAYABLE TO DEFENDANT.

On 7/16/07, ATTORNEY DUCKWORTH files MOTION TO CONTINUE HEARING; MOTION TO SET ASIDE ORDER SHORTENING TIME, OR ALTERNATIVELY MOTION TO ALTER AND AMEND ORDER SHORTENING TIME; EX-PARTE MOTION FOR ORDER SHORTENING TIME. Hearing Date **(delayed 29 days)** to 8/14/07, 2:00 p.m.

VICTORIA argues that the delay to continue the hearing is yet one more obstruction in the path of the best interests of the children and is meant only to frustrate VICTORIA'S right and the children's right to an expedient disposition of their motions.

On 7/17/07, VICTORIA files AMENDED MOTION TO STRIKE PURSUANT TO NRCP 12(f) AND MOTION FOR IMPOSITION OF SANCTIONS AGAINST PLAINTIFF IMMEDIATELY DUE AND PAYABLE TO DEFENDANT. Hearing Date **(scheduled)** for 7/24/07, 9:00 a.m.

At the 7/19/07 Hearing held before Judge Pomrenze, having recently been reassigned from another department, child custody, financial and other issues were paramount to this hearing upon the following colloquy between the parties.

> *JUDGE POMRENZE: There are the children themes, and I've had a chance to at least a little bit to review what is incredibly a huge file. But what it does disclose is some unfortunate decisions made with*

regard to these 2. However, within less than a month, neither child will be a child. I won't have jurisdiction over either one of them. So whatever has happened to Marco and Sarah, and I do this as well (washing hands) oh, well, too late and it's unfortunate, okay. I'm not saying this lightly, it's very unfortunate. I think these children have been through an awful lot. And I don't think they've benefited from the parents. Okay. But there's not much you can do now. They're both essentially emancipated, and hopefully they can get past the problems they've had and kind of find their way in being productive adults. I can only hope that, but in terms of making any decisions with regard to these two, it's just way too late.

JUDGE POMRENZE: Ma'am, I look at violations at the time they occurred. I don't look at them necessarily but I just want you to understand at this point in time I'm getting this case, which is now as I said, a multi-bucket case, so far from me being able to address those issues because, unfortunately now these children are close -- one's emancipated and the other one is going to emancipate in four weeks. There is really not much I can do to issue Orders to remedy how Marco may have been raised. Okay. It's just too late - it is - as a practical matter. And I want you to understand that that's too late. Does that mean I cannot sanction a party for violating Orders? (Tr. Pg. 16/L24)

VICTORIA challenges the constitutionality of the statutes and argues that Judge Pomrenze's courtroom demeanor and conduct toward VICTORIA implied a hostile feeling and

spirit of ill will and resulted in prejudice to VICTORIA and her children. The record in this case is replete with the Court's implicit disapproval of VICTORIA attempts to protect these children as an impossibility because in the Court's minds these minor children [15 and 16 year old] were already emancipated. VICTORIA contends that such hostile feeling and spirit of ill will from the inception of Judge Pomrenze's appearance in this case requires her immediate disqualification. VICTORIA argues that Judge Sanchez and Judge Pomrenze both subjectively characterized VICTORIA'S deep concerns about her children as futile. The brief portion of the record cited above shows Judge Pomrenze denying VICTORIA'S seemingly reasonable requests to protect her children causes her to conclude that Judge Pomrenze has demonstrated a fixed anticipatory judgment that requires her disqualification to avoid the appearance of impropriety and restore the absolute confidence of the parties in the fairness of these proceedings. In re Disqualification of Cleary, 723 N.E. 2d at 1107. VICTORIA argues that Judge Sanchez and Judge Pomrenze made age-based distinctions of the minor children that violates the Equal Protection Clause. VICTORIA further argues that the statutes at issue are facially neutral. It creates no classifications and sets forth that child custody determinations should be based solely on "the best interest of the child." This Court applied an unevenhanded application to the statutes and deliberately violated NRS 125.480 by rushing the minor children into early emancipation without procedural due process notice and an opportunity to be heard; thus, denying the minor children a relationship with VICTORIA and deprived her of her rights and responsibilities of child rearing. VICTORIA contends that any parent of ordinary

intelligence would not give up hope to try to convince the Court to protect these children. The brief portion of the record cited above shows Judge Pomrenze denying VICTORIA'S seemingly reasonable requests to issue an order to protect her children and demonstrates a fixed judgment that requires her to recuse herself and restore the absolute confidence of the parties in the fairness of these proceedings. VICTORIA argues that Nevada's public policy in determining custody of a minor child, the sole consideration of the court, is the best interest of the child" and not treating minors arbitrarily by denying them a right based solely on a few months' difference in age.

VICTORIA contends that this case should be reviewed by the Chief District Court for reassignment and/or recusal for cause as follows:

> (a) The chief judge shall have the authority to assign or reassign all cases pending in the district.
> (d) Judges who disqualify themselves from hearing a case must direct the entry of an appropriate minute order for reassignment on a random basis.
> e) Under the supervision of the chief judge, the court administrator shall assign appropriate matters to available senior judges and visiting judges.

VICTORIA argues that Judge Pomrenze's legal error, motivated by bad faith, ignores the children's troubling issues under the best interests of the children standard and focuses instead on matters that are wholly irrelevant, such as the fact that ATTORNEY DUCKWORTH abuses the process and requests a needless continuance on the eve of a hearing. Attorney Duckworth represents to the Court and

states in his motion that he is from the law firm Smith, Larsen & Wixom, but he does not inform the Court the reason that another attorney from this same firm could not make an appearance. After all, the hearing scheduled for *July 24, 2007*, is simply on the Court's Motion calendar and certainly is not a trial or an evidentiary hearing arguably justifying Attorney Duckworth's specific attendance. His request for a continuance is yet another dilatory tactic and bad-faith interference with the administration of justice. In addition, Judge Pomrenze did not evaluate the timeliness of ATTORNEY DUCKWORTH'S motion and failed to balance VICTORIA'S constitutional right to a hearing against the inconvenience and delay that would result from the continuance.

VICTORIA contends that the language used by Judge Pomrenze in the *July 19, 2007,* Court Minute Order is facially and literally ambiguous and unreasonably subject to interpretation requiring immediate court intervention for correction and/or clarification in order to ensure compliance. VICTORIA contends that generally the Nevada Rules of Appellate Procedure deem a Minute Order a nonappealable Order. Judge Pomrenze's Minute Orders on *July 19, 2007* as follows:

> *Court noted ongoing issues regarding the children, however, both children will have emancipated within a month, therefore, those issues will not be addressed. Court noted issues of arrearages and attorney's fees. Argument regarding request to continuance due to conflicting schedule of attorney Duckworth. Defendant recited her statement on the record....*

All pending Motions will be addressed at the next hearing date; 7/24/07

Motions CONTINUED to 8/28/07.

No Order is required from today, the Minutes will stand as the Order.

Hearing Date (delayed 40 days) to 8/28/07.

VICTORIA challenges for a second time this Court's premature mandate that these *minor children will soon emancipate without first issuing orders* regarding the minor children's best interest and the need for intervention into issues of their education and psychological and medical needs pursuant to NRS 125.140(2). These children still have no capacity to contract for a rental agreement at the Country Club Towers, and they are still subject to legal control by their father. This Court has never conducted an independent hearing nor issued Orders declaring the minor children legally emancipated pursuant to NRS 129.080: Judicial Emancipation of Minors and NRS 129.120 Hearing; Duties and powers of court; considerations in grant or denial of petition which states in pertinent part:

> 4. The grant or denial of the petition is a matter within the discretion of the court. In making its determination, the court shall consider:
> a.) whether the parents or guardian of the minor have consented to emancipation;
> b.) whether the minor is substantially able to support himself without financial assistance;

c.) whether the minor is sufficiently mature and knowledgeable to manage his affairs without the guidance of his parents or guardian; and
d.) whether the emancipation is in the best interest of the minor.

VICTORIA argues that Judge Pomrenze and this Court unlawfully and unnecessarily completely severed VICTORIA'S parental rights. VICTORIA contends that a reasonable person would conclude that by this Court awarding CHARLES a change of custody [CHARLES shunning the children and dumping them in their own apartment at the Country Club Towers] does not only encourage an illegal snatching but also encourage dumping the children away from VICTORIA trying to seek visitation. VICTORIA further contends that CHARLES took steps to keep the children away from her by renting an apartment for them and that such living arrangements deprived VICTORIA of any visitation and/or custody rights. VICTORIA contends that CHARLES should not be permitted to benefit from such conduct.

VICTORIA argues that a reasonable person would conclude that emerging in this Family Court is a new, unconstitutional standard for termination of parental rights: If a "fit" parent is awarded primary custody based upon receiving a sham de facto custody and the offending parent shuns his minor children and absconds them into a living arrangement separate and apart from both parents, the primary parent with the Court's blessing basically has rushed emancipation of the minor children and the non-custodial parent is forever deprived of parental rights and the children are forever deprived of being parented and

protected. VICTORIA contends that it is regrettable that Judge Sanchez and now Judge Pomrenze have altogether abandoned the statutory mandates of the best interests of the minor children and are willing to permit parental rights to be terminated in which minor children are found to be agreeably living in a separate and third residence separate and apart from both parents. VICTORIA further contends that Judge Sanchez's and now Judge Pomrenze's attitude and reasoning that these children are emancipated is legally and constitutionally unacceptable. It is inconceivable that any Court could find in this case that there was no way in which the children's best interest could be served by rushing to emancipate minor children thereby keeping them permanently away from their mother. Constitutional rights do not become moot and come into being magically only when the children attains the state-defined age of majority. VICTORIA believes she still has all the moral and social authority that comes with parenting her (2) children.

VICTORIA further challenges Judge Pomrenze's unevenhanded application of "emancipation" as a device designed to impose a different burden on different classes of persons. Phelps. v. Phelps, 337 N.C. 344, 446 S.E.2d 17, 21 (1994). VICTORIA also argues that this court violates her equal protection by considering the minor children an *older age* in making a modification of a change of custody. VICTORIA contends that the rights to equal protection and due process of law are guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 8(5) and Article 4, Section 21 of the Nevada Constitution. In particular, the Fourteenth Amendment states that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws." West v. State, 119 Nev. 410, 419, 75 P.3d 808, 814 (2003).

Apart from VICTORIA'S challenge to the constitutionality of the statutes, she also contends that the statutes violate the Fourteenth Amendment because the statutory framework offers no procedural due process by which a parent is given notice of a hearing to determine and define "joint custody," no notice of a violation of "legal custody" and "physical custody" and she was afforded no hearing prior to imposition of massive sanctions or a referral to mediation. In Mathews v. Eldrige, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Supreme Court identified three factors to determine whether a procedural due process violation has occurred: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

VICTORIA contends that in Phelps, the Court held that custody determination statutes created no classification of an *older child* either on its face or in its application. VICTORIA challenges Judge Sanchez' ruling "...that now the daughter will *soon emancipate* and there will be an issue regarding child support." VICTORIA further argues that NRS 125.480 is facially neutral and creates no classification of *children* either on its face or in its application and sets

forth that *child custody determinations* should be based solely on "the best interest of the child" *not best interests of emancipated minor children.* VICTORIA contends that NRS 125.510 also clearly makes no distinction between children and emancipated children or otherwise. VICTORIA argues that it creates no classifications and sets forth that child custody determinations should be based solely on "the best interest of the *child.*" The policy behind NRS 125.480(3)(a) is to ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of child rearing.

VICTORIA argues that this Court violates VICTORIA'S substantial due process rights when Judge Sanchez and now Judge Pomrenze infringes upon VICTORIA'S fundamental right to keep her family together and rush to emancipate her minor children. VICTORIA argues that the United States Supreme Court has held that certain aspects of family autonomy such as the right to custody of one's children and the right to keep the family together are fundamental liberty interests protected under substantive due process. Quilloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978). Judge Sanchez and Judge Pomrenze infringed on her and the children's fundamental rights when they rushed to emancipate the minor children rather than make short-term orders regarding their welfare and education. VICTORIA further argues that she is in a much better position to conclude or determine that one or both of her children is competent and financially able to emancipate from the family and to live alone fending for themselves. Certainly, VICTORIA having raised and lived

with Sarah and Marco for much of their lives was in a better position to determine their competency and maturity to be free from their mother's influence.

VICTORIA further challenges the constitutionality of the statutes and contends that NRS 125.510 as interpreted by the court violates principles of equal protection by discrimination based on older children's 'ages' VICTORIA argues that this Court should have evaluated NRS 125.480, NRS 125.490, NRS 125.510 under a heightened level of scrutiny because these statutes implicates the children's fundamental right to equal protection of the law. VICTORIA further argues that Judge Sanchez and Judge Pomrenze discriminates against a suspect class of older aged-children and infringes on their fundamental rights as "minor children" since Judge Sanchez and Judge Pomrenze were quick to rush the children into early emancipation rather than make short-term orders regarding their welfare and education. The United States Supreme Court expressly stated that "We have little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest,'" Smith v. Organization of Foster Families, 431 U.S. 816, 862-863, 97 S.Ct. 2094, 2119, 53 L.Ed.2d 14 (1977). VICTORIA argues that when Judge Sanchez and Judge Pomrenze rushed the minor children to emancipation, the Court put the parties in an adversarial position, and until the temporary order is reversed the interests of the children and the parents do diverge as adversaries especially when the children are at an immature age. VICTORIA argues that even if the minor

children presents evidence in a different hearing that they are mature, they still must satisfy the judge that this is so with a heightened standard of proof. VICTORIA challenges the constitutionality of this extra heightened standard of proof issue brought in the midst of ongoing child proceedings under a preponderance of evidence standard which resulted in Marco keeping up with his deliberate attempts to provoke arguments with his mother. Talks of Charles emancipating the children was a further factor which caused considerable disruption and perpetuated more friction in VICTORIA'S unsuccessful attempts to seek visitation and/or custody. VICTORIA argues that the use of this heightened standard of proof does little to facilitate a fair and reliable result and imports an element from the adversarial process into this child custody case where it has no rightful place. VICTORIA argues that the Court rushing the children to early emancipation totally severed her family bond with her children rather than promising any comfort. VICTORIA argues that the Court's selective blindness to these minors desperately in need of constitutional protection and loving parental guidance and mature advice is bewildering and distressing. This Court failed to take into consideration that VICTORIA and her children share a vital interest in a quick determination of a permanent order rather than a temporary never-ending-determination of their natural relationship. VICTORIA also contends that her losses cannot be measured. In this case, CHARLES shunned his children and virtually dumped Sarah in an apartment at the Country Club Towers after just reaching the age of 16 and Marco was only 15 years of age. Judge Sanchez and Judge Pomrenze effectively foreclosed the possibility of VICTORIA ever parenting her children again and the children being parented by

VICTORIA. In addition, a reasonable person would assume that with the help of this Court, ATTORNEY DUCKWORTH and CHARLES sought Orders for a modification of child custody knowing that the children were living alone without parental supervision at the Country Club Towers which basically pit their immature interests [dropping out of school and aimlessly loitering] against those of their mother.

VICTORIA contends that the policy behind NRS 125.480, *Best interest of child*... is to ensure that *minor children* have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage and to encourage the parents to share the rights and responsibilities of *child* rearing.

> 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and....

VICTORIA argues that Judge Sanchez failed to make short-term temporary adjustments to the parties' custody arrangement to protect and safeguard her children's welfare which includes treatment for Marco's ADHD and for both children receiving an education from a traditional high school. Also, Judge Pomrenze fails to make short-term

temporary adjustments to the parties' custody arrangement to protect and safeguard the children's welfare which includes treatment for Marco's ADHD and both minor children receiving an education from a traditional high school pursuant to NRS 125.140(2). Judge Pomrenze also abuses her discretion and ignores both minor children's welfare pursuant to NRS 125.510 9(b) which states in pertinent part:

> 9. Except where a contract providing otherwise has been executed pursuant to NRS 123.080, the obligation for care, education, maintenance and support of any minor child created by any order entered pursuant to this section ceases:
> (b) When the child reaches 18 years of age if he is no longer enrolled in high school, otherwise, when he reaches 19 years of age.

VICTORIA argues there are still several unheard and unresolved motions pending before Judge Pomrenze which she refuses to hear and decide as follows:

a.) *November 1, 2005: Defendant's Motion to Set Aside Temporary Order For Change of Physical Custody Pursuant to NRCP 60(b);*

b.) *April 30, 2007: Defendant's Application for An Order to Show Cause Why Plaintiff Should Not Be Held in Willful and Deliberate Contempt for Failure to Make Timely Monthly Support Payments, and to Reduce Support Arrears to Judgment, and For Imposition of a Wage Assignment, and for Sanctions Against*

Plaintiff; Plaintiff's Countermotion for Sanctions and Attorney's Fees;

c.) *May 4, 2007: Defendant's Motion For Discovery and Evidentiary Hearing; Motion to Reinstate and To Enforce Support Obligations and To Reduce Support Arrears with Interest to Judgment; and Motion for Ex Parte Order for Wage Assignment and Motion for Imposition of Sanctions Immediately Due and Payable Against Plaintiff;*

d.) *June 4, 2007: Defendant's Motion To Strike Plaintiff's Reply to Defendant's Reply to Plaintiff's Countermotion For Finding Defendant To Be a Vexatious Litigant; Countermotion for the Imposition of Sanctions Against Defendant and For Reimbursement of Attorney's Fees to Plaintiff;*

e.) *June 4, 2007: Defendant's Motion to Strike Plaintiff's Reply to Plaintiff's Reply and Opposition to Defendant's Application For an Order to Show Cause Why Plaintiff Should Not Be Held in Willful and Deliberate Contempt For Failure To Make Timely Monthly Support Payments, and To Reduce Support Arrears To Judgment, and For Imposition of a Wage Assignment, and for Sanctions Against Plaintiff ;*

f.) *May 4, 2007: Defendant's Motion for Discovery and Evidentiary Hearing; Motion to Reinstate and to enforce Support Obligations and to Reduce Support Arrears with Interest to Judgment; and Motion for ex Parte Order for Wage Assignment and Motion for Imposition of Sanctions Immediately Due and Payable*

Against Plaintiff; and Plaintiff's Countermotion for Attorney's Fees and Sanctions Against Defendant;

g.) *July 9, 2007: Defendant's Motion for Relief from Judgment Due to a History of Facts and Attendant Circumstances Evidencing Plaintiff's Fraud upon the Court Pursuant to NRCP 60(b); and Plaintiff's Countermotion for Sanctions Against Defendant and an Award of Attorney's Fees dated July 9, 2007;*

h.) *July 9, 2007: Defendant's Amended Motion to Strike Pursuant to NRCP 12(f) and Motion for Imposition of Sanctions Against Plaintiff Immediately Due and Payable to Defendant.*

On 7/20/07, Chief District Court Judge Kathy A. Hardcastle issues the unappealed and unchallenged Court Order as follows:

JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.

JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.

On 7/31/07, VICTORIA files MOTION FOR CORRECTION AND/OR CLARIFICATION OF THE JULY19, 2007 COURT MINUTE ORDER PURSUANT TO NRCP 60(b). Hearing Date **(continued 28 days)** to 8/28/07, 11:00 a.m., (8) days after Marco reaches the age of 18. Again, VICTORIA sought

but has been unable for one reason or another to obtain from Judge Pomrenze a Court Order for correction and/or clarification due to such clerical error affecting issues to be argued and decided at the *August 28, 2007* hearing. The Minute Order does not in any way identify or itemize the pending motions. Judge Pomrenze fails to immediately act to resolve any and all such clerical error on certain issues. This Court deprives VICTORIA of due process when it fails and refuses to enter Orders but instead shows favoritism to CHARLES and counsel of record when it allows them to memorialize the relief they seek in Findings of Facts and Conclusions of Law.

On 8/8/07, CHARLES swears under oath and files his Affidavit of Financial Condition and miserably fails to purge his contumacious conduct by fabricating the following:

> *"Since the time I requested custody of our children, I have maintained a separate residence from my wife. Earlier this month, I moved back in with my wife to reconcile. Our relationship has been strained as a result of these proceedings."*

VICTORIA contends that a reasonable person would conclude that CHARLES is simply lying in order to cover up his fraud upon the Court; and VICTORIA further contends that had Sarah been interviewed, she would have stated that she never speaks to CHARLES' wife and living with them at the Viking residence is out of the question. On *December 2, 2005*, CHARLES attempts to mitigate the harm he inflicted by admitting just days before the hearing commenced that he was guilty of contempt:

"During the past several months, I have been saddled with additional expenses in the form of a separate home for our children (with monthly rental and living expenses in excess of $1,500, my personal living expenses and the expenses associated with my current spouse's home.)

On 8/14/07, VICTORIA files MOTION FOR A FINAL CHILD CUSTODY AND SUPPORT ORDER. Hearing Date **(delayed 45 days)** to 9/28/07, 10:00 am. VICTORIA sought to uphold and enforce any and all Court Orders for child custody and support relief that for one reason or another has been put on administrative hold. The Court improperly vacated VICTORIA'S pending motions. VICTORIA files a Notice of Appeal and argues that the filing of the appeal in no way stays her interest in challenging CHARLES' contempt motion and for the Court to impose sanctions.

On 8/25/07, Marco's birth date - age 18.

On 8/21/07, VICTORIA files PRE-HEARING BRIEF restricted to the Court's Order of 10 pages. Hearing Date **(scheduled)** for 8/28/07, 11:00 a.m.

On 8/21/07, VICTORIA files AFFIDAVIT IN SUPORT OF DEFENDANT'S MOTION FOR CASE REASSIGNMENT AND/OR RECUSAL OF DISTRICT COURT JUDGE SANDRA L. POMRENZE FOR CAUSE.

On 8/23/07, VICTORIA files RESPONSIVE BRIEF TO PLAINTIFF'S BRIEF SUMMARIZING ISSUES remaining before the Court. Hearing Date **(scheduled)** for 8/28/07, 11:00. VICTORIA'S REQUEST FOR RELIEF:

1.) an accounting, discovery and an evidentiary hearing should be GRANTED;
2.) child support arrears should be GRANTED and reduced to judgment;
3.) spousal support arrears should be GRANTED and reduced to judgment;
4.) property equalization debt arrears should be GRANTED and reduced to judgment;
5.) NRCP 60(b) relief should be GRANTED in its entirety;
6.) CHARLES is subject to deferred sanctions.

On 8/23/07, VICTORIA files EXHIBITS IN SUPPORT OF HEARING ON CHILD CUSTODY, VISITATION AND SUPPORT ISSUES. Hearing Date **(scheduled)** for 8/28/07, 11:00 a.m.

On 8/23/07, VICTORIA files SCHEDULE OF CHILD SUPPORT ARREARAGES from January 2006 to December 2006 and files SCHEDULE OF SPOUSAL SUPPORT ARREARAGES from May 2007 to August 2007.

On 8/24/07, VICTORIA files MOTION TO CONTINUE THE AUGUST 28, 2007 HEARING DATE. Hearing Date **(delayed 46 days)** to 10/9/07, 11:00 a.m. VICTORIA requests a consolidation of her motions.

At the 8/28/07 Hearing, the parties appeared before Judge Pomrenze and she summarily vacated VICTORIA'S pending motions, and directed her instead to determine and submit to counsel of record a final figure that CHARLES would consider and then pay in full by cashier's check within 60

days. Judge Pomrenze's Orders certain hearing dates vacated without proper authority and for other than good cause as follows:

> Defendant's request for sanctions for Plaintiff's alleged violation of prior orders is DENIED;
>
> Defendant's request for Plaintiff to provide evidence of payments is DENIED;
>
> Any pending motions related to custody matters are DENIED as being moot;
>
> As to any other pending motions related to financial matters, rulings are DEFERRED pending the parties making a genuine attempt to reach a resolution;
>
> Hearing set for 9/28/07 at 10: a.m. is VACATED;
> Hearing set for 10/2/07 at 10a.m is VACATED;
> Hearing set for 10/9/07 at 11am is VACATED.

VICTORIA argues that Judge Pomrenze would further act to violate VICTORIA'S right to procedural due process when disallowing a Court return date or any other remaining avenue by vacating her numerous motions where she could obtain relief from the Court as follows:

> *ATTORNEY DUCKWORTH: Okay. So is there a return hearing date?*
> *THE COURT: Nope.*
> *ATTORNEY DUCKWORTH: Are all hearings vacated –*
> *THE COURT: Everything's vacated –*

ATTORNEY DUCKWORTH: Okay. ...
(Tr.P.25/L14-19)

On 8/31/07, VICTORIA files JUDICIAL COMPLAINTS AGAINST JUDGE POMRENZE, DISTRICT JUDGE FOR THE EIGHTH JUDICIAL DISTRICT arguing that Judge Pomrenze and JUDGE GLORIA S. SANCHEZ commits willful misconduct and violates Judicial Canons and Rules of Professional Conduct.

On 9/6/07, VICTORIA writes a letter to counsel of record indicating that she was in the process of retaining a certified public accountant to assist her with calculating a final figure to assist in formulating a reasonable settlement offer to close this case. VICTORIA contends that impliedly this offer, upon acceptance by CHARLES, would act as an accord and satisfaction. Nevada Courts have consistently held that a prerequisite for the finding of an accord and satisfaction is a clearly established meeting of the minds.

On 9/7/07, ATTORNEY DUCKWORTH responds to VICTORIA'S letter with an unwillingness to submit a good faith counteroffer or settle in the future by stating as follows:

> *Please be advised that Mr. Giampa does not consent or agree to a continuance of the timeline established by the Court."*

Clearly, CHARLES' response does not appear to be consistent with a party in good faith settlement posture. Absolutely no cooperation from him, nor his counsel of record, could be had.

Despite being Ordered by Judge Pomrenze not to file any more papers, on October 20, 2007, ATTORNEY DUCKWORTH commits abuse of process and files in bad faith an Order to Show Cause Petition.

On 9/12/07, Judge Pomrenze files AFFIDAVIT OF SANDRA L. POMRENZE IN RESPONSE TO DEFENDANT'S MOTION FOR CASE REASSIGNMENT AND/OR RECUSAL FOR CAUSE.

VICTORIA argues that Judge Pomrenze's willful misconduct in her dilatory delay evidenced by several unheard and unresolved motions pending before her in which she refuses to hear and decide should be a basis for her disqualification and another judge should be assigned to hear this case.

On 9/28/07, once VICTORIA obtained a calculation on a final figure from her accountant, she responded promptly by hand delivering a final figure and Assumptions 1-10 to ATTORNEY DUCKWORTH to demonstrate her genuine effort to resolve these proceedings amicably.

On 10/2/07, CHARLES files EX-PARTE MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY FEES, (1) month prior to rejecting VICTORIA'S genuine offer of settlement in a bad faith attempt to evade VICTORIA'S pending motions and

settlement offer. Hearing Date **(delayed 42 days)** to 11/13/07, 2:00 p.m.

VICTORIA contends that once again ATTORNEY DUCKWORTH'S motion is devoid of Points and Authorities. VICTORIA contends that CHARLES filing a Contempt Motion was solely an abuse of process to unreasonably delay litigation and delay an evidentiary hearing which was grossly unreasonable and made in bad faith with no hope for VICTORIA to recover. It served no other purpose other than to cause delay, harass and increase expenses in this litigation. ATTORNEY DUCKWORTH knowingly and recklessly filed in bad faith the Ex-Parte Motion For Order to Show Cause... against VICTORIA for the sole purpose of harassment. His malicious conduct multiplied these proceedings.

VICTORIA argues that although she filed an appeal, this Court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed Order, and this Court does have jurisdiction to consider the portion of VICTORIA'S motion concerning contempt because the district court has the power to enforce custody provisions pending appeal. That issue is collateral to the issues before this court on appeal from the divorce decree and demands reconsideration.

On 10/22/07, VICTORIA files NOTICE OF APPEAL from the August 28, 2007 Order.

On 10/25/07, VICTORIA files OBJECTION AND RESPONSE TO PLAINTIFF'S EX-PARTE MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE

HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY FEES; AND DEFENDANT'S COUNTERMOTION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATE AND WILLFUL VIOLATION OF COURT ORDER(S) FOR MONTHLY SUPPORT. Hearing Date **(scheduled)** for 11/13/07.

VICTORIA argues that Judge Pomrenze failed to impose sanctions pursuant to NRCP 11 for ATTORNEY DUCKWORTH'S bad faith and knowing recklessness and abuse of process in multiplying proceedings solely for the purpose of harassing VICTORIA and seeking sanctions for fees. VICTORIA contends that the Courts have recognized that ..."bad faith is required for sanctions under the court's inherent power." Fink v. Gomez, 239 F.3d 989, 993 (9th Cir.2001). The 9th Circuit has found that an attorney's attempt to influence or manipulate proceedings in order to gain a tactical advantage are sanctionable under a court's inherent power. Fink v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001). ATTORNEY DUCKWORTH'S sanctionable activities were intentionally and knowingly done. ATTORNEY DUCKWORTH'S purpose in filing his motion was just as malign as the frivolousness that motivated it. The injury caused here was that as a result of VICTORIA filing a reply to ATTORNEY DUCKWORTH'S EX PARTE MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR COTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN

AWARD OF ATTORNEY'S FEES, VICTORIA was ordered by Judge Pomrenze to pay ATTORNEY DUCKWORTH another $1,500.00 in fees.

On this date, Judge Pomrenze issues an Oral Order and improperly vacates VICTORIA'S motions scheduled to be heard on November 13, 2007. VICTORIA contends that a court's oral pronouncement from the bench, the clerk's minute order and even an unfiled written order are ineffective for any purpose.

On 11/5/07, ATTORNEY DUCKWORTH mails VICTORIA a letter summarily rejecting her offer to settle and did not tender a counteroffer in good faith.

> *Please be advised that Chuck Giampa rejects the settlement proposal set forth in your correspondence served upon this office October 19, 2007.*

On 11/8/07, the Court issues another Oral Order improperly vacating VICTORIA'S motions **(scheduled)** for 11/13/07. VICTORIA contends that generally a court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose.

On 11/19/07, VICTORIA files MOTION TO STAY JUDGMENT PENDING APPEAL. Hearing Date **(delayed 39 days)** to 12/27/07, 10:00 a.m.

On 11/21/07, VICTORIA files MOTION FOR RECONSIDERATION OF THE COURT ORDER OF SEPTEMBER 26, 2007, ON PLAINTIFF'S EX-PARTE

MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY'S FEES; and DEFENDANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORAL ORDER TO VACATE DEFENDANT'S OBJECTION AND RESPONSE TO PLAINTIFF'S EX-PARTE MOTION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT; PLAINTIFF'S MOTION FOR CONTEMPT AND FOR THE IMPOSITION OF SANCTIONS AGAINST DEFENDANT AND FOR AN AWARD OF ATTORNEY'S FEES; and DEFENDANT'S COUNTERMOTION FOR AN ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR DELIBERATE AND WILLFUL VIOLATIONS OF COURT ORDERS FOR MONTHLY SUPPORT [PURSUANT TO NRCP 60(b)]. Hearing Date **(delayed 37 days)** to 12/28/07, 10:00 a.m.

VICTORIA sought reconsideration of her motion because Judge Pomrenze has not yet ruled upon her moving papers and argues that she is entitled to a determination of her motion by this Court in a proper manner and upon reasonable time. VICTORIA contends that this Court should deny CHARLES' contempt motion in its entirety when he himself is in contempt of Court Orders. VICTORIA has further cause for concern because Judge Pomrenze's Minute Order is deliberately and purposefully silent as to the Court's ability and/or willingness to entertain an imposition of sanctions against CHARLES even though the parties' minor children would have each attained the age of majority.

On 12/18/07, VICTORIA files COUNTERMOTION TO STRIKE PURSUANT TO NRCP 12(f) and COUNTERMOTION FOR IMPOSITION OF SANCTIONS AGAINST PLAINTIFF. Hearing Date **(continued 9 days)** to 12/27/07, 11:00 a.m.

At the 12/27/07 Hearing, Judge Pomrenze issues the following Orders:

> *Argument regarding countermotion for attorney's fees, attorney Duckworth's contention that Defendant continues to raise custodial issues, Defendant's request for sanctions alleging that Plaintiff's Countermotion did not contain Points and Authorities and was therefore improper.*
>
> *12/28/07 HEARING is taken off calendar as the issues are on appeal;*
>
> *Defendant's Motion for Stay is Denied;*
> *Court finds Defendant is a Vexatious Litigator, given the number of motions filed over the years and the number which have been found to be non-meritorious, therefore, Defendant must get the permission of the Court to file any future motions;*
>
> *Plaintiff is awarded Attorney's Fees in the amount of $1,500.00;*
>
> *Defendant's request for sanctions against Plaintiff is denied as being non-meritorious.*

Plaintiff was not barred from filing a Countermotion and the Countermotion was meritorious in part.

VICTORIA brings to this Court's attention that in error she styled her previous Motion "Motion to Stay Judgment..." and presently requests that this Court *stay all proceedings pending appeal* because she meets the standards necessary to obtain a judgment for manifest error affecting a constitutional right. VICTORIA contends that generally a civil case will not be considered moot if an aggrieved party diligently and actively seeks relief from discernible and substantial consequences flowing from a lower tribunal's judgment. Boulet v. City of Las Vegas, 96 Nev. 611, 614 P.2d 8 (1980). VICTORIA contends that the Courts have ruled that when moving for a stay pending an appeal, a movant does not always have to show a probability of success on the merits; the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay. Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark, 2000, 6 P.3d 982, 116 Nev. 650.

VICTORIA argues that ATTORNEY DUCKWORTH disregards Judge Hardcastle's Order when she declares that VICTORIA is not a vexatious litigant and proceeds to file his motion requesting a different judge to declare VICTORIA a vexatious litigant under legal theories he thought would ultimately prevail. ATTORNEY DUCKWORTH'S attempt to avoid the consequences of his wrongful vexatious motion should fall victim to the principle of res judicata. VICTORIA argues that the doctrine of res judicata would preclude Judge Pomrenze from issuing an

Order declaring VICTORIA a vexatious litigant. VICTORIA argues that Judge Pomrenze abuses her discretion in entering a pre-filing order against her and declaring her a vexatious litigant De Long, 912 F.2d at 1148, because her Order fails in the following ways:

1. does not contain a list of the filings and rulings that led the court to impose its broad of filing restriction;

2. makes no substantive findings as to the harassing nature of VICTORIA'S actions;

3. fails to set any standard against which a future court-access determination should be made;

VICTORIA argues that she has filed numerous motions and further argues that her motions were not vexatious because they had merit in trying desperately to protect her children from CHARLES' lack of supervision of their 2 minor children. Judge Pomrenze failed to look at both the number and content of VICTORIA'S filings as indicia of the frivolousness of her claims in her courtroom. The 9th Circuit has ruled that "the plaintiff's claims must not only be numerous, but also be patently without merit." Moy, 906 F.2d at 470. Judge Pomrenze's conclusion that VICTORIA is a vexatious litigant is clearly erroneous. VICTORIA brought forth evidence that the parties' children were living alone and unsupervised. Common sense dictates that VICTORIA, a stay-at-home mom, was trying desperately to protect the parties' 2 minor children. Clearly the large number of complaints filed in her motions were not grossly false or grossly exaggerated allegations and considered

vexatious. The 9th Circuit has stated that "...the simple fact that a plaintiff has filed a large number of complaints, standing alone, is not a basis for designating a litigation as "vexatious." DeLong, 912 F.2d at 1147.

In addition, Judge Pomrenze makes the following erroneous statements..."*given the number of motions filed over the years and the number which have been found to be non-meritorious...*". Judge Pomrenze improperly relies upon the filings made before another judge which do not interfere with VICTORIA'S motions still pending before Judge Pomrenze.

VICTORIA argues that Nevada does not have a court rule or statute authorizing Judge Pomrenze to declare VICTORIA a vexatious litigant and limit her access to the courts as a defendant defending an action for a custody matter for which she did not file. VICTORIA concedes that given the long history of this case, she has filed numerous motions, but not numerous complaints for divorce. That her past filings were not vexatious because they were not filed in bad faith in attempting to protect her children. That the number of motions filed by her did not contain false or exaggerated allegations. That she brought forth substantial evidence substantiating her claims for CHARLES' contempt and for alleging his and ATTORNEY DUCKWORTH'S willful misconduct, excessive delay, abuse of process and fraud upon the court. VICTORIA contends that Judge Pomrenze abuses its discretion when she bases her decision on an incorrect view of the law or a clearly erroneous finding of fact. United States v. Finley, 301 F.3d 1000, 1007 (9th Cir.2002).

VICTORIA also contends that Judge Pomrenze has not ruled on VICTORIA'S pending motions seeking redress but instead - with complete indifference - interferes with her attempts to file legal documents which results in constitutional due process violations and prejudices her right to future filings.

Judge Sanchez, *on February 11, 2004*, made the following inopposite statements about VICTORIA'S ability to file motions which proves Judge Pomrenze of bias and prejudice when she deems VICTORIA a vexatious litigant as follows:

> *JUDGE SANCHEZ: ...and defendant may be very well meaning, and she certainly is a brilliant litigant from -- in comparison to the normal litigants who don't have counsel because she – she cites the case law.*
>
> *She's -- she's you know, she's someone you'd want to hire if you had that kind of case where there were so many complex issues to litigate because she's extremely thorough.*

> *JUDGE SANCHEZ: There's numerous citations to transcripts, a lot of research. I mean, I can't conceive -- it must take months to research that kind of a brief, to file a ninety-nine page brief with twenty-two issues for relief. And she cites transcripts and case law and -- I mean, it's beyond the pale. We don't even have lawyers who've been practicing for thirty years filing those kinds of pleadings. So it's -- The benefit is that we know we have an informed litigant here who is not the normal uninformed pro per litigant who is at a loss as to what the law provides and what's required in terms of burden of proof.*

Chief District Court Judge Kathy A. Hardcastle issues the unappealed and unchallenged Court Order on *July 20, 2007* and inopposite finding of Judge Pomrenze:

> *JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.*
>
> *JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.*

On 1/25/08, the Nevada Supreme Court issued an Order Dismissing Appeal which states in pertinent part:

> *Our review of the documents transmitted to this court pursuant to NRAP 3(e) reveals jurisdictional defects. This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. No statute or court rule authorizes an appeal from an order addressing motions to strike, motions for sanctions, or motions regarding discovery.*
>
> *In addition, while an order granting or denying an NRCP 60(b) motion is generally appealable, it appears that the district court has deferred ruling on all financial issues, which includes appellant's NRCP 60(b) motion.*

Once the district court enters a written order resolving the NRCP 60(b) motion, appellant, if aggrieved, may file an appeal from that order.

VICTORIA contends that that Ninth Circuit has crafted a procedure to allow for a remand to the trial court when facts arise which would allow for relief under Rule 60(b) after an appeal has been taken. Williams v. Woodford, 384 F.3d 567, 586 (9th Cir. 2004). Also "[A] notice of appeal filed after the district court announces judgment is not effective until the district court has disposed of all Rule 60(b) motions filed no later than ten (10 days after judgment is entered." Miller v. Marriott Int'l, Inc., 300 F.3d 1061, 1063-64 (9th Cir. 2002).

On 2/27/08, VICTORIA hand delivers REVIEW OF PLAINTIFF'S PROPOSED COURT ORDER OF DECEMBER 27, 2007 which reflects corrections that she believes needs to be made.

On 3/10/08, Judge Pomrenze's Notice of Entry of Findings of Fact, Conclusions of Law and Order state as follows:

1. The Defendant has filed a Notice of Appeal of this Court's prior Order rendered on September 26, 2007. Accordingly, this Court lacks jurisdiction to entertain the relief requested by way of Defendant's Motion for Reconsideration of the Court's Oral Order to Vacate Defendant's Objection and Response to Plaintiff's Ex-Parte Motion to Show Cause Why Defendant Should Not Be Held in Contempt of Court; Plaintiff's Motion for Contempt and for the Imposition of Sanctions Against Defendant and for an Award of Attorney's Fees. In this regard, those issues are

the subject of an appeal, and the hearing scheduled for December 28, 2007, at 10:00 a.m. should be vacated;

2. During the history of this litigation, the Defendant has filed numerous motions, frequently rearguing issues that previously were addressed by the Court. For the most part, Defendant's papers have been found to be non-meritorious or frivolous. Based on the frequency of her filing, as well as the nature of the issues raised in her papers, the Court finds the Defendant, Victoria Lugo-Giampa, to be a vexatious litigator;

3. Defendant's Motion to Stay Judgment Pending Appeals lacks merit, and the same should be denied;

4. Defendant's Countermotion for an Order to Show Cause Why Plaintiff Should Not Be Held in Contempt of Court for Deliberate and Willful Violation of Court Order(s) for Monthly Support lacks merit, and the same should be denied;

5. It is further ordered, adjudged and decreed that based upon this Court's finding that Defendant, Victoria Lugo-Giampa is a vexatious litigant, the Defendant hereby is restrained and prohibited from filing any further motions and/or papers with the Court without first obtaining permission from the Court to file a motion and/or paper.

On 4/2/08, VICTORIA files her Notice of Appeal with the Nevada Supreme Court.

VICTORIA contends that a reasonable person would conclude that when Judge Pomrenze was presented with the

golden opportunity to right any wrongs, she instead refused, without citing any cases, statutes, or rules, yet makes erroneous findings of fact and conclusions of law and abuses her discretion in deeming VICTORIA a vexatious litigator. Judge Pomrenze steadfastly refused to make any short-term orders concerning the minor children. It was part and parcel of her calculated effort to refrain from enforcing any statutes or rules for as long as possible to deliberately and purposefully conspire with ATTORNEY DUCKWORTH to moot the issue of child custody and elude what she doubtlessly feared would be the adverse consequences of such an admission – that of willful misconduct, abuse of process, dilatory tactics of delay, and fraud upon the court committed by ATTORNEY DUCKWORTH and CHARLES in complicity with this Court. The record is replete with ATTORNEY DUCKWORTH'S and CHARLES' acts of unclean hands and bad faith deliberately meant to circumvent the terms of the Decree of Divorce and to interfere with the Court's ability to adjudicate the parties' dispute. This sequence of events makes it perfectly clear that Judge Pomrenze was far more concerned with giving ATTORNEY DUCKWORTH favoritism than with preserving any rights VICTORIA and her children may have had under Nevada State law. The fact of the matter is that Judge Pomrenze's conduct here caused real harm. It certainly harmed innocent children in not receiving an education from a traditional high school as previously ordered by this court and needed psychiatric intervention for Marco's diagnosis of ADHD, and it totally deprived VICTORIA of her fundamental right to parent her children and the children's right to be parented by their mother. Worse, it harmed public confidence in the fair administration of justice in the courts of this circuit.

VICTORIA contends that legal error can constitute misconduct if it involves bad faith, bias, abuse of authority, disregard for fundamental rights, and intentional disregard of the law or any purpose other than the faithful discharge of judicial duty. That newly discovered evidence is sufficient to cause a reasonable person to question Judge Sandra Pomrenze's impartiality and bias and that upon remand the case be assigned to a different judge.

VICTORIA further contends that clearly Judge Pomrenze commits misconduct that harms the integrity of the judicial process and results in a miscarriage of justice when she entered a pre-filing order with undue haste because such sanctions treads on VICTORIA'S procedural due process right of future access to the courts.

In addition, other courts have held that rearguing previously rejected issues is not sufficient evidence of bad faith or a tactic to harass the plaintiff. That the assessment of any sanctions must be directed against Attorney Duckworth and his client who comes to court with unclean hands for disobeying previous court orders for support arrearages and for leaving the parties' children alone without parental supervision. Lone Ranger Television, Inc., 740 F.2d at 726-27.

On 5/27/08, VICTORIA filed VICTORIA GIAMPA'S CIVIL PROPER PERSON APPEAL STATEMENT and VICTORIA GIAMPA'S MOTION *TO STAY ALL PROCEEDINGS* PENDING APPEAL PURSUANT TO NRCP 8.

On 6/6/08, ATTORNEY DUCKWORTH filed RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

On 7/8/08, VICTORIA filed with the Nevada Supreme Court NOTICE OF INTENT TO FILE EX PARTE EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST ATTORNEY BRYCE C. DUCKWORTH, ESQ., PURSUANT TO N.R.C.P. 64, E.D.C.R. 5.20 AND E.D.C.R. 2.26.

On 7/15/08, VICTORIA filed PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

VICTORIA visited the Nevada Supreme Court website on *July 5, 2005*, and was shocked to discover that ATTORNEY DUCKWORTH had leaked confidential information and violates the Nevada Revised Statutes when he posted a Press Release and application for the Commission on Judicial Selection, 8th District Family Court, Dept. D, on the Supreme Court of Nevada website for wide dissemination and unauthorized viewing to the public of the following:

Bryce Callow Duckworth

Las Vegas Attorney with Smith, Larson & Wixom Bryce Duckworth's Application

List by case name and date the five most significant cases (not including cases pending in which you have been involved and describe:

a. Case name and date
b. Court and presiding judge and counsel
c. the importance of each case to you and the impact of each case on you
d. your role in the case

Charles Frank Giampa v. Victoria Margaret Lugo Giampa Case No. D224029 (1998-2008)

This matter epitomizes the acrimony that accompany many divorce proceedings. The issues involved all aspects of family law, i.e. child custody evaluation, valuation and division of assets and debts, support fees and sanctions. Most recently, lengthy proceedings were conducted regarding the father's request to modify custody regarding the parties' two children. These recent proceedings spanned more than 2 years. The hearings oftentimes were contentious and required a heightened degree of patience. In retrospect it may have been easier for me simply to withdraw from the case and avoid the contentiousness of the proceedings. The case file includes multiple volumes of pleadings and papers filed with the Court. I was dedicated to represent my client notwithstanding the exhaustive proceedings before the District Court.

I served as counsel for Charles F. Giampa since the initiation of the divorce proceedings in 1998. My involvement as his attorney has included numerous appearances in court, including evidentiary proceedings.

My experience as a husband and a father are attributes that contribute to my handling of family law related issues. I am an active father who understands the importance and significance of parental involvement in a child's life. I have coached my children's soccer and little league baseball teams and I currently sponsor my daughter's T-ball baseball team. Again, I am better able to understand the needs and concerns of children and spouses as a result of my experience as a husband and a father.

VICTORIA sought the Commission on Judicial Selection's immediate intervention to stop ATTORNEY DUCKWORTH from disseminating such unauthorized confidential information. VICTORIA moves quickly in these proceedings and states that at the time ATTORNEY DUCKWORTH mailed his application into the Commission on Judicial Selection, Case No. 98D224029 is alive and still pending. VICTORIA further contends that NRAP 26 provides authority for this Honorable Court to grant her an Order Shortening Time to hear her Motion For a Temporary Restraining Order Against ATTORNEY DUCKWORTH to stop disclosure of such confidential information without seeking permission from the Court and without noticing VICTORIA.

VICTORIA also relied on NRAP 26(d) to shorten the time which states in pertinent part:

> (d) Time—Extension, Shortening. Except as otherwise provided in these rules, or when not otherwise controlled by statute, the time provided in any of these rules within which an act shall be done, may be extended or shortened by stipulation of the parties, or by order of the court or a justice thereof upon good cause shown. No stipulation extending time shall be effective unless approved by the court or a justice thereof; and such stipulations must be filed before expiration of the time period which is sought to be extended.

VICTORIA contends her procedural due process rights were violated when ATTORNEY DUCKWORTH deliberately and with malice raised the gag order without first providing her with reasonable notice that it was considering raising the order affecting her due process liberty and property interests, but no such notice was afforded here. Procedural due process ensures that the litigant is afforded reasonable notice of and an opportunity to oppose a restrictive order's issuance. VICTORIA seeks sanctions and contends that ATTORNEY DUCKWORTH, with malice, acts in bad faith and complete indifference to the Nevada Revised Statutes when he violates NRS 125.110(2) which states in pertinent part:

> NRS 125.110 What pleadings and papers open to public inspection; written request of party for sealing.
> 1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office:
> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of

service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
(b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.
2. All other papers, records, proceedings and evidence, including exhibits and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding.

VICTORIA contends that NRS 125.110 must be strictly construed, and when a statute is clear on its face, the Courts will not look beyond the statute's plain language. NRS 125.110 plainly states that certain documents in divorce proceedings "shall upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys...". "Shall' is mandatory and does not denote judicial discretion." Under NRS 125.110, the district court has no discretion in divorce cases to seal pleadings, court findings, orders that resolve motions, or judgments. NRS 125.110(2) allows the court to seal documents in a divorce proceeding and only upon a party's written request. Here ATTORNEY DUCKWORTH requested that this Court seal the entire case file, including all orders, judgments and decrees.

VICTORIA also relies on E.D.C.R. 5.20 - Preliminary injunctions and temporary restraining orders which states in pertinent part:

> (c) A motion for a temporary restraining order or preliminary injunction must be supported by an affidavit upon personal knowledge setting forth in detail the facts in justification of such relief.
> (d) Ex parte motions for restraining orders granting temporary relief on matters involving property, custody, visitation and support of children, spousal support or any other issue not governed by Rule 5.21, 5.22 or 5.85 will be considered only in cases of extreme emergency.
> (e) Ex parte motions must be supported by an affidavit upon personal knowledge describing in detail the facts constituting the urgency and a certification in writing by the moving parties' attorney of the efforts, if any, which have been made to give notice to the adverse party and the reasons supporting the claim that notice should not be required.
> (g) In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order.

(h) On 10 days' notice to the party who obtained the temporary restraining order, without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move for its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
(i) Form and scope of injunction or restraining order:
(1) Every order granting an injunction and every restraining order shall set forth with specificity the reasons for its issuance, and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. The order is binding on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
(2) No temporary restraining order may be granted unless coupled with an order fixing the time for hearing a motion for preliminary injunction.
(3) Orders granting a preliminary injunction or temporary restraining orders must fix the time within which the restraining order, if any, and all pleadings, affidavits and briefs in support of the restraining order and the motion for preliminary injunction must be served on the adverse party, and the time for filing of the adverse party's opposition, counter-affidavits and briefs.

VICTORIA contends that ATTORNEY DUCKWORTH seeks to be selected by the Commission on Judicial Selection for

the prestigious position of a Family Court District Judge, and yet in the same breadth he violates the very same Judicial Canons which he will swear to under oath to uphold which states in pertinent part:

> A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
>
> A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> ***Commentary Canon 2A***
>
> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.
> The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although

not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. See also Commentary under Section 2C.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

VICTORIA contends that Courts have previously ruled that there are stronger reasons to deny public access to judicial records concerning private matters when public access "could only serve to satiate a thirst for scandal"); State v. Grimes, 29 Nev. 50, 81, 84 P. 1061, 1071 (1906). VICTORIA contends that Courts have recognized that "no legitimate purpose can be served by broadcasting the intimate details of a soured marital relationship," however, good cause must be shown before a proceeding can be closed, Katz v. Katz, 514 A.2d 1374, 1379 (Pa. Super. Ct. 1986).

On 7/16/08, VICTORIA emailed Joyce Woodhouse, Nevada Legislator, District No. 5, seeking her assistance in

challenging the constitutionality of the Best Interest of the Children standard.

On 7/18/08, VICTORIA filed an Ethics Complaint against Attorney Duckworth with the State Bar of Nevada and enclosed as exhibits NOTICE OF INTENT TO FILE EX PARTE EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST ATTORNEY BRYCE C. DUCKWORTH, ESQ. PURSUANT TO N.R.C.P. 64, E.D.C.R. 5.20 AND E.D.C.R. 2.26 and PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

On 7/23/08, VICTORIA sought permission from Judge Pomrenze to file a Motion to seek a final order and hand delivered it to Judge Pomrenze's legal assistant Stephanie.

On 7/24/08, Judge Pomrenze returned by U.S. Mail VICTORIA'S Motion with the following note from Judge Pomrenze's legal assistant, Stephanie:

> *Please file an Ex Parte Motion seeking leave of the court to file the motion.*
>
> *Please also submit a proposed Order granting the ex parte motion for the judge to sign in the event that she grants the request.*

On 8/18/08, VICTORIA hand delivered her Ex Parte Motion to Judge Pomrenze's office.

On 8/25/08, VICTORIA spoke to Jen and asked her if Judge Pomrenze had given VICTORIA permission to file her Motion. Jen told VICTORIA to call back tomorrow.

On 8/27/08, VICTORIA spoke to Jen and asked her if Judge Pomrenze had given VICTORIA permission to file her Motion, and told VICTORIA to call tomorrow.

On 8/28/08, VICTORIA left a message with Jen and asked her if Judge Pomrenze had given VICTORIA permission to file her Motion.

On 8/29/08, VICTORIA spoke to Jen and told VICTORIA that the Judge was not in yesterday and will sit down with her today; call back this afternoon.

On 9/2/08, VICTORIA left message with Jen and ask her if Judge Pomrenze had given VICTORIA permission to file her Motion.

On 9/3/08, VICTORIA spoke to Jen and she told VICTORIA that per judge's discretion, with no reason, Judge Pomrenze did not grant permission for VICTORIA to file her Motion

CONCLUSION

Accordingly, VICTORIA, has been diligent in attempting to seek permission from Judge Pomrenze to file her motion for the purpose of securing a final order pursuant to NRCP 60(b) and the Nevada Supreme Court January 25, 2008 Decision, and has satisfied all the

requirements and conditions to obtain an issuance of a Writ of Mandamus or in the alternative a Writ of Prohibition.

ORDERS OF THE RECORD ESSENTIAL TO PETITIONER VICTORIA GIAMPA 'S PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE, A WRIT OF PROHIBITION

WHEREFORE, PETITIONER VICTORIA prays that this Court:

1. issue a Writ of Mandamus commanding Family Court on or before October 15, 2008 to allow PETITIONER VICTORIA to file her motion to seek a final order pursuant to NRCP 60(b) and pursuant to the Nevada Supreme Court January 25, 2008 Decision;

2. issue a Writ of Prohibition prohibiting JUDGE SANDRA L. POMRENZE on or before October 15, 2008 from enforcing a vexatious litigant order and threatening sanctions against PETITIONER VICTORIA based on the above facts;

3. transfer PETITIONER VICTORIA'S case to another available District Court Judge;

4. award PETITIONER VICTORIA compensatory damages in a sum yet to be determined;

5. award PETITIONER VICTORIA reasonable costs and expense of this proceeding;

6. grant PETITIONER VICTORIA such other and further relief as the Court deems proper.

DATED this 12th day of SEPTEMBER, 2008.

By: Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Proper Person

CERTIFICATE OF MAILING OF PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION

I, Victoria Giampa, hereby certify that on the 12th day of September, 2008, I personally placed in the U.S. Mail, postage prepaid, **PETITIONER VICTORIA GIAMPA'S APPLICATION FOR PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE A PETITION FOR WRIT OF PROHIBITION**, to the following:

Bryce C. Duckworth, Esq.
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorney for Charles Giampa

VICTORIA GIAMPA
Petitioner in Proper Person